

THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,)	No. CR22-198-RSL
)	
Plaintiff,)	DEFENSE MOTION TO REVOKE
)	DETENTION ORDER
v.)	
)	<u>Oral Argument Requested</u>
GIANNI S. THOMAS,)	
)	Noted for January 6, 2023
Defendant.)	

Gianni Thomas, through Assistant Federal Public Defender, moves for an order revoking the detention order entered against him on November 1, 2022, Dkt. 14, and maintained following a hearing held on December 13, 2022. Dkt. 28.

I. RELEASE PLAN

The defense asks the Court to release Mr. Thomas (1) directly to inpatient treatment focused on both his substance use disorder and mental health, then to a sober living house; (2) directing continued participation in Community Passageways, a community-based violence reduction program; (3) with location monitoring (home detention); (4) to return to a job with a supportive employer who attended his initial detention hearing and spoke on his behalf, and (5) with all of the standard and special conditions typically imposed in a case like this (e.g., travel restrictions, ongoing mental health and drug treatment, no new law violations, submitting to search).

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1 **A. Treatment and Residence Specifics**

2 Mr. Thomas has been accepted into Pioneer Human Services' Co-Occurring
3 Residential Program (CORP) at North Sound Behavioral Health Treatment Center. The
4 program is 60–90 days long and offers the following:

5 A comprehensive range of services [] geared to treat the needs of [people
6 diagnosed with a substance use disorder and mental health issues] over a
7 longer period of time. An interdisciplinary team of licensed medical
8 personnel, mental health and substance use disorder professionals, and
9 case managers coordinate service delivery. Specialty services are
10 provided with a comprehensive assessment of a client's needs.... Mental
11 health treatment includes medication management instruction.

12 <https://pioneerhumanservices.org/treatment/centers>.

13 Following completion of inpatient treatment, Mr. Thomas would move to a
14 sober-living house, rather than back with family, so that he would continue to live in a
15 structured setting that involves urinalysis testing and a “house manager” who could
16 report positive urinalysis tests or other issues to Pretrial Services.¹

17 **B. Community Passageways**

18 Early on, counsel raised with Mr. Thomas the idea of connecting him with a
19 community-based violence prevention program focused on mentoring young people
20 entangled with the criminal legal system. He embraced the idea immediately. Like so
21 many young people the Court sees, Mr. Thomas's life pushed him to grow up fast and
22 put him in supportive, adult-like positions relative to people who should have been the
23 ones offering support. It became clear early on that Mr. Thomas's experiences left him

24 ¹ Counsel estimates that space in a sober living facility could be secured with roughly a
25 2–3-week turnaround once Mr. Thomas enters inpatient treatment so that it would be
26 ready when he graduates. Although counsel believes it unlikely to happen, if there was
a brief gap between inpatient treatment completion and clean and sober housing space,
Mr. Thomas could reside at the Residential Reentry Center and would have no
objection to his bond being modified off-calendar to add that condition.

1 hungry for the type of guidance, support, consistency, and guidance many take for
2 granted. Community Passageways’s model is designed to fill this kind of role:

3 **Who We Are**

4
5 Community Passageways (CP) is a Seattle based nonprofit founded in 2017 with a vision for zero
6 youth incarceration. As a felony diversion and prevention program, CP is leading the way in
reimagining and actively creating an alternative to today’s criminal legal system.

7 Over the last 20 years in Seattle, we have seen a sharp decline in the number of young people in
8 detention. But even as the overall number decreased, our current juvenile legal system has a
9 disproportionately harmful impact on youth of color, particularly black youth. While only 10% of King
10 County’s 2 million residents are black, they now make up almost half of the detention population on
any given day, and more than half of felony offenses.

11 We have a four-pronged approach to community justice:

- 12 • Prevention: Keep youth on a good path. Show them new paths.
- 13 • Diversion: Keep people out of the prison system and in community.
- 14 • Support: Support people already in the prison system.
- 15 • Reintegrate: Ensure a smooth, successful integration into the community.

16 Our community-centered and evidence-based model provides an alternative to the current
17 criminal legal system. We collaborate with families, schools, the court system, correctional center
18 staff, religious institutions, policy makers, and community members to support adolescent youth of
color. We provide youth mentors and access to programs focused on personal healing, identity
development, and leadership building.

19 We employ men and women from the community who share similar racial, cultural, and socio-
20 economic backgrounds with our young people who have lived experience navigating the full
21 spectrum of the school-to-prison pipeline to act as credible messengers and Ambassadors. Our
22 Ambassadors work with heart, humility, and compassion, to lead community and school-based
healing circles, individual and family case management, court advocacy, and youth leadership
23 opportunities.

24 Young people kept in the community through their dedication and our support have gone on to
25 enroll in college, start businesses, graduate from high school, and help rebuild our communities.

26 <https://www.communitypassageways.org/> (“About” page).

1 Mr. Thomas was accepted to Community Passageways while at the Federal
2 Detention Center (FDC) and has been working with a mentor named Zaheed Lynch.²
3 As it happens, counsel met Mr. Lynch prior to Mr. Thomas's Community Passageways
4 acceptance when Mr. Lynch accompanied young people to multiple panel discussions
5 hosted at Kent high schools during an annual "Civics Day"³ program. Counsel thus had
6 the privilege of seeing Mr. Lynch interact
7 with young people—both his mentees and
8 the high school student participants—and
9 learned more about his background.
10 Mr. Lynch began working at Community
11 Passageways as a volunteer while he
12 studied at the University of Washington.
13 His dedication, empathy, and insight were
14 manifest. Counsel was thrilled to learn that
15 he had been assigned to work with
16 Mr. Thomas. The two quickly developed rapport when Mr. Lynch first visited
17 Mr. Thomas at the FDC. They have met multiple times since then. Given this, if
18 released, Mr. Thomas will have the additional benefit, during inpatient treatment and
19



Zaheed Lynch mentors youth struggling with fentanyl use.

20 ² Cabotaje, Angela, *True Stories: What We Lost and Found After Fentanyl*, SeattleMet
21 (November 3, 2022) ([https://www.seattlemet.com/health-and-
22 wellness/2022/11/fentanyl-addiction-recovery-true-stories-seattle-king-county#zaheed-
23 lynch](https://www.seattlemet.com/health-and-wellness/2022/11/fentanyl-addiction-recovery-true-stories-seattle-king-county#zaheed-lynch))

24 ³ Civics Day introduces high school seniors to the criminal legal system and includes a
25 panel comprised of Community Passageways participants and mentors. The FPD has
26 partnered in the full-day program since 2018, which has been co-sponsored by the
ACLU of Washington since 2020. Undersigned counsel serves as the program-day lead
and works on the curriculum with Kent School District and ACLU-WA partners. See
<https://waw.fd.org/node/2731> (FPD Website "News" page, January 2020).

1 after, of having a mentor he trusts who understands the challenges he faces and can
2 help him navigate them.

3 C. Employment

4 Owing to Mr. Thomas's geniality, work ethic, and his employer's ability to see
5 that he is more than the worst thing he has ever done,⁴ Mr. Thomas has a job to return
6 to after he completes treatment. Prior to his arrest, Mr. Thomas was working at a retail
7 TMobile store. His employer attended Mr. Thomas's first detention hearing and spoke
8 on his behalf. He wanted to attend the second hearing but was unable to leave work due
9 to a corporate requirement that day. At the initial detention hearing, Mr. Thomas's
10 employer introduced himself and then described:

11 I know that he's had some situations that he's been working with the
12 courts, and we've been going through and trying to work with him.

13 One thing that I can say is that in the amount of time I've had with him,
14 he has been super reliable, very friendly, very "get the job." One of the
15 things I can say is, is that one of the things that I personally look for is
16 somebody that's nervous for wanting a position when they're looking for
17 a job. Even with the prep, I think that he was nervous and wanted to call
18 and wanted to have a good interview because the first interview went with
19 – went through with me, and the second one was with the district
20 manager.

21 We were aware of the situations in the past and, ultimately, we wanted to
22 be able to work with him and see how he did. What I can say is that as of
23 right now, he's been nothing but an exemplary employee, and I can't
24 speak to anything in his past. All I can speak is to what I see him in every
25 day. And what I can say is that he is a part of the team. He comes in, he's
26 friendly, he works with the customers, hasn't had any kind of problems
with anybody in any way, shape or form.

So one thing, I guess that's what I want to say the most, is that as far as
what I can personally see, is that he has been nothing but excited and
interested in moving forward, despite whatever he has in this past that
hopefully will be resolved at some point.

⁴ "Each of us is more than the worst thing we have ever done." – Bryan Stevenson.

Exhibit 2 (transcript) at 21–22; *see also* Exhibit 5 (work photos). The Court knows how rare it is for an employer to write a letter supporting release—much less one who attends a detention hearing to speak on someone’s behalf. That the store manager did so speaks to Mr. Thomas’s potential, warmth, and ability to follow through on directives. Knowing that his employer has stood by him and advocated for him during this process only strengthens Mr. Thomas’s commitment to demonstrate that his employer was right to take a chance on him—and he doesn’t take that opportunity for granted.

II. PROCEDURAL HISTORY AND ADDITIONAL BACKGROUND

A. Arrest, Pretrial Services Investigation, and First Detention Hearing

On October 25, 2022, Gianni Thomas appeared before Magistrate Judge Brian A. Tsuchida for his initial appearance after having been arrested on a Complaint charging him with two counts of Unlawful Possession of a Firearm, in violation of 18 U.S.C. § 922(g)(1). Mr. Thomas was detained pending a detention hearing scheduled for November 1, 2022. Dkt. 6.

Mr. Thomas was interviewed by United States Pretrial Services (“Pretrial”) on November 1, 2022, in the United States Marshals Service lockup at the courthouse. During that interview, Mr. Thomas disclosed to Pretrial that his father was killed by law enforcement in 2007.⁵ Given the newness of the attorney-client relationship, defense counsel was not at that point privy to more detailed information about Mr. Thomas’s trauma history. His grandmother verified that her son was murdered by police, as well as that Mr. Thomas attended counseling after his father’s murder. He disclosed, and his grandmother confirmed, that he has not received any additional mental health treatment

⁵ A civil settlement was ultimately reached regarding Mr. Thomas’s father’s murder by police. Cash seized when Mr. Thomas was arrested, which has since been civilly forfeited by law enforcement, was actually from an initial payment to Mr. Thomas from that civil settlement.

1 since his father's murder. Pretrial also spoke with Mr. Thomas's employer, who
2 verified that his job remained waiting for him if he was released.

3 At his initial detention hearing, Mr. Thomas proposed the following release plan:

4 9 **II. PROPOSED RELEASE PLAN**

5 10 The defense asks the Court to release Mr. Thomas to Pretrial Services
6 11 supervision upon an appearance bond including the standard conditions of supervision,
7 12 residence and search conditions, travel restriction to the Western District of
8 13 Washington, and the following additional special conditions:

- 9 14 • Active GPS location monitoring with curfew.
10 15 • Chemical dependency evaluation and treatment as directed; UA testing.
11 16 • Mental health evaluation and treatment as directed.
12 17 • Maintain employment.

13 18 Mr. Thomas would also be under DOC supervision.

14 19 Through DOC, he is engaged with STOPWA—an agency that provides anger
15 20 management and domestic violence prevention services.¹ STOPWA confirmed to the
16 21 Federal Public Defender that Mr. Thomas underwent a domestic violence assessment
17 22 with their program on October 11, 2022, which is still being completed.

18 Dkt. 11 at 2. The FPD had also arranged for Mr. Thomas to be interviewed for a
19 substance use disorder evaluation while in the USMS lockup prior to his detention
20 hearing. *Id.* at 2–3. The evaluation was not available until after the hearing, however.
21 The defense was also in the process of referring Mr. Thomas for participation in a
22 community-based violence prevention program. *Id.* at 3. At the time, the FPD was
23 pursuing referral to either the YMCA's Alive and Free Program⁶ or Community
24 Passageways. *Id.*

25 After reviewing the Pretrial Services Report, including Pretrial's concern about
26 the proposed release address, and hearing arguments from counsel, the Magistrate
Judge ordered Mr. Thomas detained. Dkt. 14; Exhibit 2.

⁶ Alive and Free program description available at: <https://www.seattleyymca.org/social-impact-center/youth-young-adults/violence-prevention-intervention>.

1 **B. Work with the FPD, Treatment Admission, and Second Release Plan**

2 After Mr. Thomas was ordered detained, the FPD continued to get to know him
3 and to find an appropriate treatment placement. As he grew to trust counsel more,
4 Mr. Thomas disclosed that he saw his cousin die by a gunshot to the head. The details
5 of his cousin's death haunt him, and he described experiencing hallmark symptoms of
6 post-traumatic stress—difficulty sleeping, persistently feeling unsafe, and flashbacks.
7 He also discussed further growing up without his father and how triggering George
8 Floyd's murder was for him given the echoes of his father's death. It became clear that
9 the nightly drinking and marijuana use Mr. Thomas described to Pretrial and the
10 substance use disorder evaluator has been self-medication for trauma.

11 Unlike many people, Mr. Thomas is eager to talk about his struggles and to
12 engage with mental health treatment. He did not need to be convinced that he needs
13 mental health treatment. He carries positive impressions of mental health treatment
14 from the brief period he spent in counseling after his father was killed. He is also open
15 to taking medication for his mental health. He recognizes that his pain, his substance
16 use, and the times he has acted out in the past are interconnected. He also recognizes
17 that he cannot work through them alone.

18 Mr. Thomas has demonstrated that he will accept outstretched helping hands. He
19 made the most of the change TMobile gave him; he has embraced Mr. Lynch's
20 mentorship; and he has increasingly come to reach out to the FPD for support on days
21 he struggles emotionally at the FDC. Counsel has no doubt that he would do the same
22 with Pretrial Services—particularly understanding that the Court would be monitoring
23 whether he continued to earn the opportunity given to him.

1 **C. Supplemental Pretrial Services Investigation and Second Detention**
2 **Hearing⁷**

3 On December 8, 2022, the defense filed a motion to reopen Mr. Thomas’s
4 detention hearing. Dkt. 22. While it did not agree to release, the government did not
5 oppose reopening the detention hearing based upon new information the defense
6 presented. *Id.* Counsel forwarded the proposed release plan (the same plan outlined
7 above) to the government and Pretrial Services before the hearing. In response, Pretrial
8 requested the substance use disorder evaluation Mr. Thomas completed, which counsel
9 provided.

10 That evaluation was dated November 4, 2022—10 days after counsel was
11 appointed to represent Mr. Thomas. *See* Dkt. 5. Based upon Mr. Thomas’s disclosure of
12 past substance abuse and counsel’s expectation that he would need to do drug treatment
13 if released, the FPD sought to get a jump on the placement process by having a drug
14 assessment done while he was in custody. Counsel was at the time focused on drug
15 treatment because of funding challenges to placement that necessitate a certain type of
16 assessment for clients with Medicaid. The FPD did not ask for a mental health
17 evaluation and did not at the time know very much about Mr. Thomas’s trauma history
18 given the newness of the attorney-client relationship.

19 During the evaluation, Mr. Thomas disclosed that he was diagnosed with PTSD
20 and ADHD in 2021 and also endorsed having had “a significant period (that was not a
21 direct result of drug/alcohol use) in which [he] experienced”: “grief/loss issues,”
22 “depression,” and “sleep disturbances.” The evaluation notes that “THOUGH NOT ON
23 MED’S [*sic.*] HAS GOOD...PRESENTS TO NOT NEED SERVICES.” The
24

25 ⁷ While heavily quoted, the second detention hearing summary here is not exhaustive.
26 Counsel highlights issues of concern and contention in this brief and relies upon the
attached transcript for the complete record.

1 evaluation thus documented Mr. Thomas's mental health diagnoses, distressing
2 symptoms, and prior use of mental health medication.

3 At the second detention hearing, Pretrial Services recommended detention. A
4 component of its recommendation was that it did not perceive a sufficient nexus
5 between Mr. Thomas's substance abuse and offense conduct (currently alleged or prior)
6 and noted a passage in the evaluation that indicated there was no need for mental health
7 treatment at the time of the evaluation. It further faulted the description of
8 Mr. Thomas's support network in the evaluation as one of only "passive support" in the
9 community. Counsel acknowledges forgetting the "presents to not need services"
10 comment when Pretrial Services requested a copy of the evaluation. Had counsel
11 remembered, or had Pretrial Services reached out to counsel for more detail about the
12 treatment placement upon reading the evaluation, counsel would have reiterated the
13 trauma history already known to Pretrial Services and additional information learned
14 since then. Irrespective of any additional trauma history information, it bears emphasis
15 that Pretrial Services knew that: (1) Mr. Thomas lost his father to police violence that
16 he described as continuing to impact him; (2) he was diagnosed by King County with
17 PTSD in 2021; (3) he had previously taken mental health medication; (4) he and the
18 FPD believed he needed mental health treatment; and (5) North Sound Behavioral
19 Health viewed him as an appropriate candidate for their CORP program that provides
20 both substance use disorder and mental health treatment.

21 At the detention hearing, counsel outlined the proposed release plan and then
22 expressed concern about Pretrial Services's characterization in its supplemental report,
23 stating:

24 And I think that the treatment program we are recommending to the Court
25 is absolutely an appropriate treatment. I, as I said, was a little troubled to
26 see in the Pretrial Services report a sort of parsing – and as I read it, at
least – was suggestion that perhaps the mental health component wasn't

1 something that was supported by the evaluation, or that my perception
2 was that we were somehow shoehorning him into a specific program.

3 As the Court knows and Pretrial Services knows from our earlier
4 interviews, Mr. Thomas is someone who has experienced profound
5 trauma in his life. His father was killed by police in a very violent
6 fashion. He has experienced personal trauma himself. And I think that the
7 idea that there is no connectedness to his trauma experiences, to his prior
8 cases, to his numbing through alcohol and drugs is not something that I
9 think the record supports.

10 What the Court has before it is a young person who has a huge amount of
11 potential, is just an absolute joy to work with, has had a lot that he has
12 been trying to navigate on his own, that he was put in a position to be
13 essentially kind of the head of the household at a time when what he really
14 needed was support and help. He has shown that he is amenable to
15 treatment. As indicated during the last hearing, his grandmother did send
16 all of the children to mental health counseling after his father was killed,
17 but that was not something that was maintained.

18 George Floyd's murder was incredibly triggering for him, given the
19 similarities between that and the way that his father died and – I would
20 just leave it that it concerns me that the need for both mental health
21 treatment and drug treatment and the connection to offenses in the past, to
22 challenges that he's had, is not being recognized.

23 Exhibit 1 (transcript) at 9–11. Counsel further noted that the FPD was able to confirm
24 that Mr. Thomas enrolled in the STOP program as required from another case. *Id.* at 12.
25 In addition to counsel and FPD paralegal Cindy Steward, Zaheed Lynch and two
26 community supports (friends and coworkers) were also in court to support Mr. Thomas.
As already noted, Mr. Thomas's boss wanted to attend but could not due to a work
obligation. He reiterated his ongoing support for Mr. Thomas, however, and asked
counsel to relay it to the Court.

The government then argued for continued detention, stating:

First off, I'd like to just say that I do commend Ms. Pai-Thompson's
zealous advocacy for Mr. Thomas, and I appreciate that he's very
youthful. But, unfortunately, my job is to look at his history and the

1 conduct that he is charged with committing and his risk to the community.
2 And because of those things, I cannot join defense counsel's requests.

3 I do think that, in addition to very concerning crimes that are charged,
4 have been committed while on supervision with the Department of
5 Corrections, the other sort of large pause for me is that I see a lot of no
6 contact order violations and protection order violations. And those, from a
7 prosecutorial perspective, are always markers of either an inability or an
8 unwillingness to follow court conditions. And there would be so many
9 that would need to be cobbled together to make this a cohesive, doable
10 plan.

11 I just think that the combination of the history, being on supervision and
12 these violations, repeated violations of no contact orders, presents a
13 situation where we are requesting the Court maintain Mr. Thomas in
14 custody.

15 *Id.* at 13.

16 The Court then heard from Pretrial Services, which noted that the supplemental
17 report contained a direct quote from the assessment (the quote included above) and
18 indicated that United States Supervising Probation Officer Jennifer Van Flandern was
19 present in case the Court had any questions. *Id.* at 14. The Court did not.

20 Defense counsel then addressed the concern both the government and Pretrial
21 Services expressed about how Mr. Thomas did on state DOC supervision as an
22 indicator of whether he could be safely released to federal pretrial supervision, stating:

23 Just briefly, Your Honor, since DOC supervision was raised and sort of
24 concerns about people having violations on DOC supervision. I think we
25 quite often in the conviction context, and I think quite rightfully, hear
26 discussion of how vastly superior our Pretrial Services and probation
[sic.] office is to DOC. I think that is particularly meaningful for someone
as young as Mr. Thomas and with a plan like this. So I don't think
someone having violations on DOC is indicative of the fact that with the
additional support and supervision our probation office provides that they
cannot be safely maintained in the community.

Id. at 15.

1 At the hearing's conclusion, the Magistrate Judge indicated it was denying the
2 defense's request to reopen and release Mr. Thomas. *Id.* at 16. It also noted that its
3 decision is reviewable by this Court. *Id.*

4 **III. IMPLICIT BIAS**

5 Counsel submits that unconscious bias impacted Mr. Thomas's second detention
6 hearing. In raising this issue for the Court and parties' discussion, counsel wants to be
7 clear and explicit that this is not a suggestion that anyone is acting in bad faith, with
8 conscious or overt bias, or intentionally trying to treat Mr. Thomas differently. Quite to
9 the contrary. By its very nature, unconscious bias operates below our conscious
10 awareness. As this Court's Unconscious Bias juror video reminds us:

11 It's been proven that most biases happen at an unconscious level. In fact,
12 researchers have found that unconscious bias is a part of how we all think
13 and process information...

14 The fact is, most of us don't want to judge others unfairly or be guided by
15 unconscious bias when making decisions. But simply having good
16 intentions does not work. Neither does ignoring things like age, race, or
17 gender, because unconscious bias really does happen without us realizing
18 it...

19 The fact is honest, intelligent, really good people are impacted by
20 unconscious bias every day. The more aware of it we are, the better...

21 Counsel submits this is what is happened in the hearing below in the treatment of
22 Mr. Thomas's trauma history and treatment needs; the allegation of an absence of nexus
23 between his self-medicating drug use and offense conduct, prior and currently alleged;
24 and whether he presents such an immitigable danger that *no* combination of conditions
25 could "reasonably assure" his return to court and community safety.

26 Being influenced by unconscious bias is not something any of us *wants* to do.
Nevertheless, it is something that we all *in fact* do, and do more regularly than our
conscious, thoughtful, moral minds are comfortable confronting. As all parties know,

1 however, proceedings before this Court are not about comfort, but justice and
2 adherence to the law—with attention to applying legal standards even-handedly and
3 making factual inferences with assiduous care to avoid unconsciously relying on the
4 caricatures of certain groups that imbue this nation’s racist history.

5 Counsel is confident that all parties want to see justice done. It bears emphasis,
6 again, that counsel believes and assumes that all parties have acted in good faith
7 throughout this case. But for that belief, it would be difficult for counsel to raise this
8 issue here without fear that counsel’s words would be held against Mr. Thomas. The
9 defense has faith in this District’s commitment, and the commitment of all parties
10 working within it, to rooting out and addressing implicit bias. Counsel recognizes that
11 this is a charged issue to raise, and raises it not in an effort to point fingers or embarrass
12 anyone, but with sincere hope that it will lead to productive introspection, discussion,
13 and re-consideration of conclusions drawn negatively against Mr. Thomas in ways that
14 reflect implicit bias at work.

15 If we are to continue to grow in our practice and the dispensation of justice, and
16 if we are to continue to grow as a collaborative community of professionals leading the
17 way in educating the broader court community about unconscious bias, then we must be
18 able to have the hard conversations in situations such as these. We cannot call ourselves
19 courageous in this arena unless we allow ourselves to be vulnerable and do the hard
20 work in our own cases. Believing we all have that courage, and with this goal of
21 collaboration toward growth in mind, counsel raises the issue here.

22 **A. Dehumanization and the “Adultification” of Children of Color**

23 Underpinning our unconscious bias is a long history of racial injustice and
24 stereotypes about different racial groups in this country—a history with which all of the
25 parties are familiar. Enduring from that history are negative stereotypes about African-
26 American young men. We are quick as a society to assign labels like “dangerous” and

1 “predatory” to men of color; and we are terrible as a society at acknowledging their
2 emotional and psychic pain and approaching it with empathy and compassion.
3 Although not specific to the mental health context, research around disparities in a
4 physical health setting is worth noting here—specifically, medical pain management.
5 Research has demonstrated the impact of implicit bias in the persistence of racial
6 disparities in pain management for Black people, with Black people receiving inferior
7 pain management care. As one University of Washington physician described:

8 Other findings are equally worrisome. In a 2012 study, my colleagues and
9 I found a correlation between pediatricians’ implicit (unconscious) racial
10 biases and how they treated pain in a simulated African-American or
11 white teenager following surgery: As the strength of provider implicit
12 bias favoring whites increased, the likelihood of prescribing appropriate
13 pain medication decreased only for the black patient. What’s more, a
14 meta-analysis of 20 years of studies covering many sources of pain in
15 numerous settings found that black/African American patients were 22%
16 less likely than white patients to receive any pain medication.

17 Racial and ethnic disparities in pain treatment are not intentional
18 misdeeds: health care providers do not decide that some groups deserve
19 pain relief while others should suffer. Instead, inequities are the product
20 of complex influences, including implicit biases that care providers don’t
21 even know they have.

22 Janice A. Sabin, PhD, MSW, “How We Fail Black Patients in Pain,”

23 <https://www.aamc.org/news-insights/how-we-fail-black-patients-pain> (Jan. 6, 2020);

24 *see also, e.g.*, Antoinette Schoenthaler, EdD, and Natasha Williams, EdD, “Looking
25 Beneath the Surface: Racial Bias in the Treatment and Management of Pain,”

26 <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2793179> (June 9, 2022);

Kelly M. Hoffman, et al., “Racial Bias in Pain Assessment and Treatment

Recommendations, and False Beliefs about Biological Differences Between Blacks and

Whites,” <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4843483/> (April 4, 2016).

Although the studies address physical pain, the foundational emotional dehumanization

1 of Black people in this country that scaffolded the brutal atrocities of slavery and
2 informs our implicit biases today gives reason for concern about this phenomenon in an
3 emotional context.

4 One way in which research demonstrates this bias manifests is in the
5 “adultification” of children of color—particularly Black children. *See, e.g.*, Amir
6 Gilmore, “Antiblackness and the Adultification of Black Children in a U.S. Prison
7 Nation,” [https://www.researchgate.net/publication/352106857_Antiblackness_and_](https://www.researchgate.net/publication/352106857_Antiblackness_and_the_Adultification_of_Black_Children_in_a_US_Prison_Nation)
8 [the_Adultification_of_Black_Children_in_a_US_Prison_Nation](https://www.researchgate.net/publication/352106857_Antiblackness_and_the_Adultification_of_Black_Children_in_a_US_Prison_Nation) (March 2021) (“As
9 adultified Black youth, they lack autonomy and are not granted leniency to learn from
10 their mistakes like their white peers. With their actions and intentions perceived as
11 deviant, ill-willed, or hypersexual, Black children are susceptible to a wide range of
12 violence from school punishment, the criminal justice system, sexual abuse and
13 exploitation, and excessive police force.”) (from abstract); Phillip Atiba Goff, PhD, and
14 Matthew Christian Jackson, PhD, “The Essence of Innocence: Consequences of
15 Dehumanizing Black Children,” [https://www.apa.org/news/press/releases/2014/03/](https://www.apa.org/news/press/releases/2014/03/black-boys-older)
16 [black-boys-older](https://www.apa.org/news/press/releases/2014/03/black-boys-older) (Feb. 24, 2014); Kim Taylor-Thompson, “Treating All Kids as Kids,”
17 <https://www.brennancenter.org/our-work/analysis-opinion/treating-all-kids-kids>
18 (May 24, 2021). Acts by Black children and young adults are more readily perceived on
19 both societal and individual levels as adult acts, with children of color not receiving the
20 generosity of perspective with which we approach youthful decisions by white children.
21 Put simply, we attribute poor decisions by white children to *childhood*; we attribute
22 poor decisions by Black children to the *child*. Implicit bias influences us on a societal
23 level to see reckless behavior or irresponsible decision-making by Black children as
24 core character—who they will always be. It handicaps our ability to discern between
25 the individual and a dangerous caricature implicit bias foists upon them.

1 As a nation, we have historically denied the humanity of men of color. We then
2 deny their pain—that it is as deep and debilitating as our own. We fail to see their
3 thoughtfulness, warmth, and compassion. We underappreciate their aspiration, striving,
4 and potential. We have historically failed as a society to acknowledge, embrace, and
5 celebrate boys and men of color as fully actualized human beings in the way we
6 acknowledge people from the “majority culture.” All of this history impacts our
7 unconscious biases. Layering this onto the degree to which we as a society socialize our
8 children against seeing men—all men—as emotional and empathetic creatures, and one
9 is left with devastating, intersectional, unconscious bias.

10 **IV. LEGAL STANDARD**

11 **A. The Bail Reform Act**

12 As the Supreme Court held in *Salerno*, “[i]n our society liberty is the norm, and
13 detention prior to trial . . . is the carefully limited exception.” *United States v. Salerno*,
14 481 U.S. 739, 755 (1987). This presumption of release is encapsulated in the Bail
15 Reform Act, 18 U.S.C. § 3142. The statute states that the Court “shall order” pretrial
16 release, § 3142(b), except in certain narrow circumstances. Before a person may be
17 detained, the government must show that a person poses a danger to the community by
18 clear and convincing evidence, and it must show that a defendant poses a flight risk by
19 a preponderance of the evidence. *United States v. Gebro*, 948 F.2d 1118, 1121 (9th Cir.
20 1991); 18 U.S.C. § 3142(f). Even if the Court determines under § 3142(c) that an
21 unsecured bond is not sufficient, the Court “shall order” release subject to “the least
22 restrictive further condition[s]” that will “*reasonably assure*” the person’s appearance
23 in court and the safety of the community. 18 U.S.C. § 3142(c)(1) (emphasis added).
24 Under this statutory scheme, “it is only a ‘limited group of offenders’ who should be
25 detained pending trial.” *United States v. Shakur*, 817 F.2d 189, 195 (2d Cir. 1987)
26 (quoting S. Rep. No. 98-225, at 7 (1984), *as reprinted in* 1984 U.S.C.C.A.N. 3182,

1 3189); *see also United States v. Byrd*, 969 F.2d 106, 109 (5th Cir. 1992) (“There can be
2 no doubt that this Act clearly favors nondetention.”). Even when a person is charged
3 with a serious crime or has a significant prior convictions, there may be release
4 conditions that will reasonably assure the safety of the community. *United States v.*
5 *Dominguez*, 783 F.2d 702, 707 (7th Cir. 1986).

6 **B. This Court Considers Release De Novo**

7 This Court’s review of the Magistrate Judge’s order denying Mr. Taylor’s
8 emergency motion for temporary release is de novo. 18 U.S.C. §§ 3145(b)–(c); *United*
9 *States v. Koenig*, 912 F.2d 1190, 1192–93 (9th Cir. 1990). Specifically, this Court must
10 review the evidence before the magistrate judge and any additional evidence proffered
11 by the parties “and make its own independent determination whether the magistrate’s
12 findings are correct with no deference.” *Koenig*, F.2d at 1193.

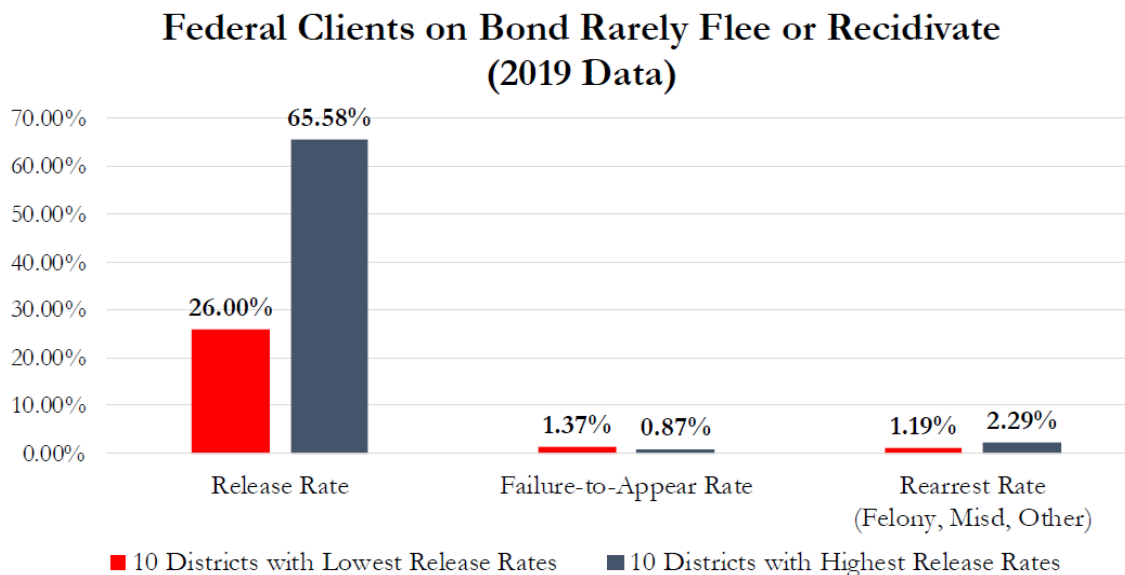
13 **V. STATISTICS SHOWING THAT IT IS RARE FOR PEOPLE ON BOND**
14 **TO FLEE OR REOFFEND WHILE UNDER PRETRIAL SUPERVISION**

15 It is not necessary to detain Mr. Thomas to meet the goals of the Bail Reform
16 Act, which are to reasonably assure appearance in court and community safety. In this
17 case, the Court should be guided by AO statistics showing that nearly everyone released
18 pending trial in the federal system appears in court and does not reoffend. In fact, in
19 2019, 99% of accused persons released in federal court nationwide appeared for court
20 as required, and 98% did not commit new crimes on bond. Exhibit 3 (AO Table H-15,
21 December 31, 2019) (showing a nationwide failure-to-appear rate of 1.2% and a
22 rearrest rate 1.9%).

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Moreover, when release rates increase, crime and flight do not. A near-perfect compliance rate on bond is seen equally in federal districts with very high release rates and those with very low release rates.⁸ Even in federal districts that release two-thirds of all accused persons on bond, fewer than 1% fail to appear in court and 2% are rearrested while released.⁹ The below chart reflects this data:



The bond statistics for this district likewise strongly suggest that Mr. Thomas should be released. In this district, people released pretrial failed to appear for court

⁸ The data showing near-perfect compliance on bond is illustrated in the chart above, “Federal Clients on Bond Rarely Flee or Recidivate.” The districts with the highest and lowest release rates were identified using the version of AO Table H-14A for the 12-month period ending December 31, 2019. *See* Exhibit 4 at 2 (AO Table H-14A (Dec. 31, 2019)). The failure-to-appear and rearrest rates for these districts were calculated using Exhibit 3 (AO Table H-15). With regard to flight, the ten federal districts with the lowest release rates (average 26.00%) have an average failure-to-appear rate of 1.37%, while the ten districts with the highest release rates (average 65.58%) have an *even lower* failure-to-appear rate of 0.87%. *See* Exhibits 3 and 4. With regard to recidivism, the ten districts with the lowest release rates have an average rearrest rate on bond of 1.19%, while the ten districts with the highest release rates have an average rearrest rate of 2.29%. *See id.*

⁹ *See id.*

1 only 0.5% of the time in 2019, and only 0.1% of people were rearrested on release. *See*
2 Exhibit 3. Mr. Thomas must be released because the government has not established
3 that he would be among the very few accused persons who fail to appear in court or
4 who are rearrested on bond. Detaining him without such evidence violates his
5 constitutionally protected liberty interest.

6 **VI. RELEASE IS APPROPRIATE HERE**

7 Gianni Thomas is 25 years old. His exemplary performance as an employee and
8 his enrollment as directed in the STOP program reflect real and meaningful effort to
9 better his life. He wants nothing more than stability and to be a present, loving father—
10 a desire animated by his own loss as a child. He was working to change his life before
11 his arrest in this case, and the relative weakness of the evidence for the second alleged
12 incident here bears emphasis in that regard. Beyond that, however, the defense’s
13 proposed release plan far surpasses any level of treatment, support, and supervision
14 Mr. Thomas has ever received in life—through the court system or otherwise.

15 If released directly to a 60–90 day inpatient substance use disorder and mental
16 health treatment program, Mr. Thomas would not be back in the community until he
17 had spent at least two months working on himself *full time*. While in treatment, he
18 would be able to talk about the traumas he has endured and learn skills to effectively
19 process their ongoing emotional impacts. This addresses directly what he has
20 unsuccessfully tried to manage through self-medication with marijuana and alcohol. He
21 would learn how those traumas can act as substance use triggers—what to be vigilant
22 for and tools to process triggers when they arrive. The fact that Mr. Thomas’s substance
23 use disorder history is of marijuana and alcohol use makes this process all the more
24 achievable—one blessing of his situation is that he is not contending with a fentanyl,
25 heroin, or methamphetamine addiction.

1 During inpatient treatment and beyond, Mr. Thomas will continue to receive
2 support, advice, and empathy from Zaheed Lynch’s mentorship through Community
3 Passageways. The guidance Mr. Lynch is able to provide is something for which
4 Mr. Thomas has spent much of his life hungry—someone reliable he can trust, relate,
5 and look up to; who sees his potential; and who is not asking him for anything.
6 Mr. Lynch will also work to connect Mr. Thomas to other community resources. As
7 noted in the Second Supplemental Pretrial Services Report, this includes referring
8 Mr. Thomas to Good Intentions, which is a BIPOC-focused substance use and mental
9 health treatment provider with which he can engage after completing inpatient
10 treatment.

11 Mr. Thomas would also be subject to strict supervision by Pretrial Services—
12 including home detention and marijuana testing. Unlike with DOC, which does not
13 routinely test for marijuana use given its status in Washington State, federal supervision
14 will involve multiple monthly tests for marijuana. A sober living house will perform
15 additional tests beyond this. Moreover, federal supervision is simply better. Pretrial
16 Services officers carry fewer cases and have more resources than DOC officers.
17 Consequently, they build better relationships with closer monitoring and stronger
18 relationships with the people they supervise. They can, and do, loop in the FPD for
19 support and assistance where appropriate. Mr. Thomas’s issues on DOC supervision
20 simply do not mean it is impossible to safely release him to the community given how
21 well Pretrial Services performs its function and the services the FPD has put in place
22 beyond that.

23 Mr. Thomas would have a job to return to and community supports who have
24 demonstrated that they will continue to “show up” for him—by coming to his court
25 appearances and being reliably responsive to communications from the FPD. And,
26 finally, he will continue to receive support from his case team at the FPD. In addition to

1 counsel, Mr. Thomas is working with a paralegal and an investigator from the FPD—
2 both of whom have visited him at the Federal Detention Center and have provided
3 emotional support through the arrest and detention litigation process. Mr. Thomas has
4 developed trust in the defense team during his time at the FDC and now regularly calls
5 the office to speak with a member of the case team when he is down or stressed and
6 needs emotional support.

7 Mr. Thomas has demonstrated an eagerness to engage with people who he can
8 tell care about what happens to him. If released, he has multiple relationships in place to
9 buoy him as he works on himself and his future. He would also be strictly supervised
10 while he receives services targeted toward his needs and particular challenges. The
11 Court could also set periodic status conferences to track his progress and keep his case
12 even more closely monitored. The intensive treatment and supervision plan the defense
13 proposes will reasonably assure Mr. Thomas's return to court and community safety.
14 He should be released to begin inpatient treatment.

15 DATED this 28th day of December 2022.

16 Respectfully submitted,

17 s/ *Vanessa Pai-Thompson*
18 Assistant Federal Public Defender
19 Attorney for Gianni S. Thomas
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